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5 IN THE UNITED STATES DISTRICT COURT
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7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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9 ROBERT J. ELLIS,

No. C 17-7349 WHA (PR)

10 Plaintiff,

ORDER OF DISMISSAL

11 v.

12 ROBERT FOX,

13 Defendant.

14 _____ /

15 Plaintiff, a California prisoner proceeding pro se, filed this civil rights case under 42
16 U.S.C. 1983. He states that his conviction in state court violates his constitutional rights
17 because he received ineffective assistance of counsel and he was convicted based upon false
18 evidence. His federal habeas petition was denied as untimely under the AEDPA. He claims that
19 the AEDPA's statute of limitations violates his constitutional rights, and he seeks appointment
20 of counsel to "investigate the prosecution's case" and avoid the time-bar.

21 Habeas is the "exclusive remedy" for the prisoner who seeks "'immediate or speedier
22 release'" from confinement. *Skinner v. Switzer*, 562 U.S. 521, 533-34 (2011) (quoting
23 *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005)). A civil rights complaint seeking habeas relief
24 should be dismissed without prejudice to bringing it as a petition for writ of habeas corpus.
25 *Trimble v. City of Santa Rosa*, 49 F.3d 583, 586 (9th Cir. 1995). Plaintiff seeks appointment of
26 counsel in order to overturn his conviction and obtain release from custody. As he ultimately
27 seeks to challenge his conviction and be released from custody, the relief he seeks must be
28 pursued in a habeas petition, not in a civil rights case. While he is subject to the AEDPA

1 provisions regarding timely and successive petitions, he may seek to avoid the former by
2 showing “actual innocence,” *see House v. Bell*, 547 U.S. 518, 539 (2006), and the latter by
3 obtaining the necessary certification from the United States Court of Appeal for the Ninth
4 Circuit, *see* 28 U.S.C. § 2244(b)(2)(B)(ii).

5 For the foregoing reasons, the instant case is DISMISSED without prejudice to seeking
6 federal habeas relief.

7 The clerk shall enter judgment and close the file.

8 **IT IS SO ORDERED.**

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10 Dated: February 1, 2018.
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WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE